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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 192

WILLIS E. GIBBS,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION OF WILLIS E. GIBBS FOR REHEARING

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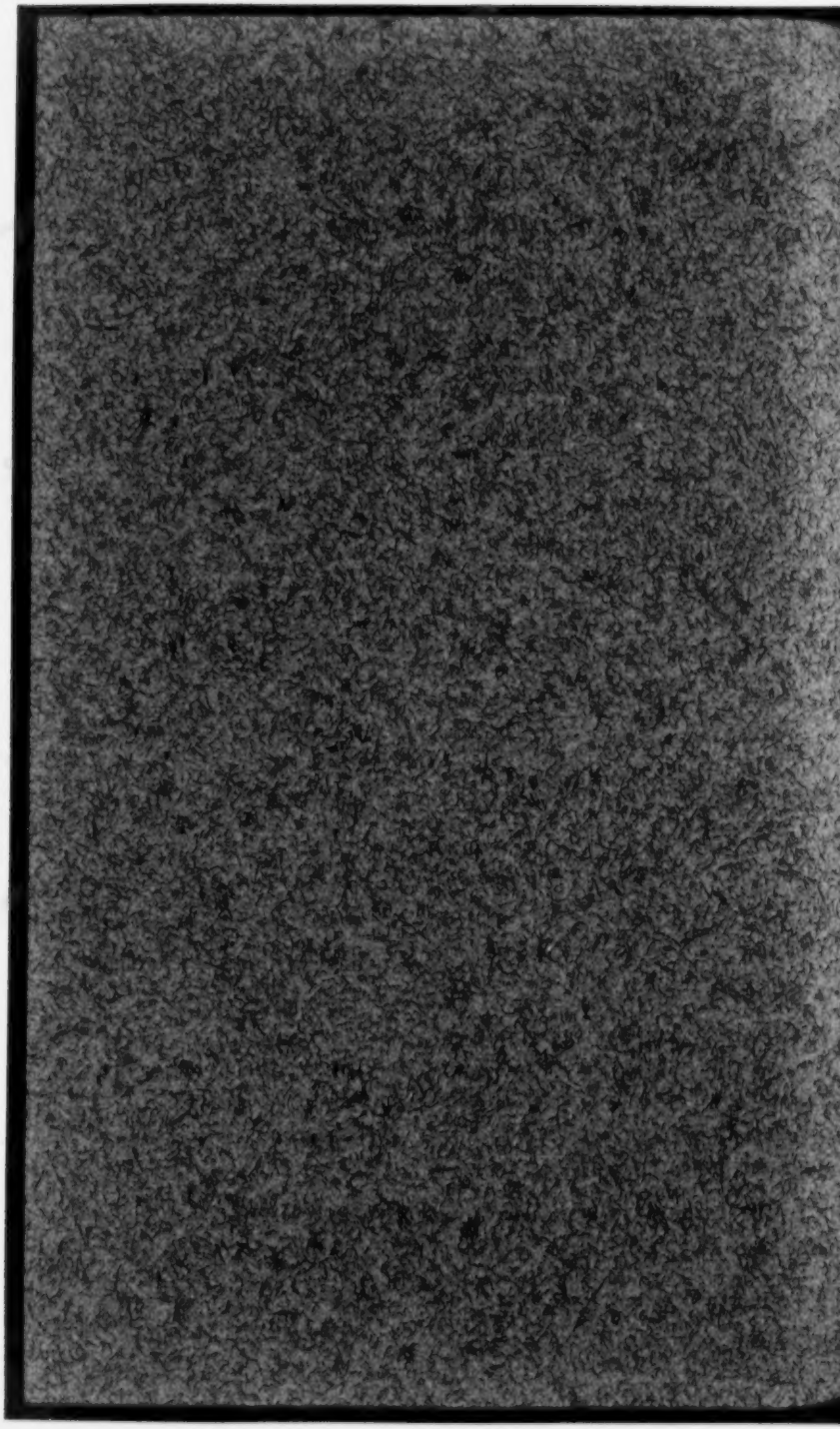

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION OF WILLIS E. GIESE FOR REHEARING

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Willis E. Giese, respectfully moves for a rehearing of the above case in which a judgment of conviction of the petitioner for alleged violation of the Selective Training and Service Act of 1940 was affirmed by an equally divided Court on January 8, 1945. The grounds for seeking such rehearing are as follows:

1. An important constitutional question is involved in this case which should be affirmatively passed upon by

this Court.[1] Petitioner contended below[2] and in this Court[3] that the denial to him of the right to present as a defense to his indictment the fact that the statutory procedural requirements of the Selective Training and Service Act had not been complied with operated to deprive him of his liberty without due process of law and in violation of the Fifth Amendment to the Constitution. Petitioner seeks this rehearing in order that the Court may consider anew and attempt affirmatively to pass upon this constitutional question.

2. The argument in this case was had before only seven justices of the Court, Mr. Justice Rutledge being absent from the bench when the argument took place. Because of the importance of the constitutional question involved petitioner seeks the opportunity for reargument of the case before all of the justices of this Court who are qualified to pass upon petitioner's case.

3. In the alternative, and if reargument be not granted by this Court, then petitioner prays that the case may be remanded to the United States Court of Appeals for the District of Columbia, with the right to that Court to grant reargument of the case if it be so advised. As the judgment of this Court now stands petitioner will be deprived of his liberty for a maximum period of three years under the District Court's judgment of conviction, although that conviction is thought to be invalid by half of the justices of this Court who considered petitioner's appeal. Petitioner's appeal before the United States Court of Appeals of the District of Columbia was heard and decided against petitioner by a divided Court, and only two of the five judges of that Court (representing a majority of the three

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[1] cf. *Home Insurance Co.* v. *New York*, 119 U. S. 129, 122 U. S. 636; *City of Shreveport* v. *Holmes*, 125 U. S. 694.

[2] R. 16, 24.

[3] Petitioner's brief, pp. 20, 21.

judges who sat) voted to affirm petitioner's conviction. Under the circumstances of this case, and in view of the equally divided opinion of the justices of the Supreme Court of the United States, it is submitted that this Court, if unwilling to hear reargument of the case itself, should remand it to the United States Court of Appeals for the District of Columbia in order that petitioner may have the opportunity to request a hearing before the full bench of the United States Court of Appeals. By such action petitioner would be afforded the opportunity of having his appeal heard and determined by a clear majority of that appellate tribunal.

Conclusion

Unless the relief prayed for herein be granted, the result of the judgment of this Court will be that petitioner will stand convicted of and imprisoned for a felony, although only a minority of the total number of appellate justices (in the United States Court of Appeals and in this Court) qualified to pass upon petitioner's case have expressed the opinion that the conviction should be sustained.

Respectfully submitted,

EDMUND D. CAMPBELL,
Southern Building,
Washington, D. C.,
Attorney for Willis E. Giese, Petitioner.

Certificate

I, Edmund D. Campbell, attorney for petitioner, do hereby certify that the foregoing petition for rehearing is presented and filed in good faith so that justice may be done and not for the purpose of delay.

EDMUND D. CAMPBELL,
Attorney for Petitioner.